

IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCHES, "A" JAIPUR

BEFORE DR. MITHA LAL MEENA, ACCOUNTANT MEMBER
AND SH. NARINDER KUMAR, JUDICIAL MEMBER

I.T.A. No. 721/JPR/2024
Assessment Year: 2021-22

Sh. Bhewa Ram Sharma,
Harsoli, Renwal Road,
Teh. Kishangarh Renwal,
Jaipur, Rajasthan-303603

[PAN: BBSPS 6202C]
(Appellant)

Vs. ITO, Ward-4(1),
Jaipur

(Respondent)

Appellant by : Sh. P. C. Parwal, C. A.
Respondent by : Sh. Arvind Kumar, CIT-DR
Date of Hearing : 25.09.2024
Date of Pronouncement : 14.10.09.2024

ORDER

Per Dr. Mitha Lal Meena, AM:

The captioned appeal has been filed by the assessee against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 22.03.2024 in respect of Assessment Year: 2021-22.

2. The assessee has raised the following grounds of appeal:

- “1. The Ld. CIT(A), NFAC has erred on facts and in law in dismissing the appeal filed by the assessee due to non-compliance of the notices by not deciding the grounds raised by the assessee on merit and without providing adequate opportunity of hearing.
2. The Ld. CIT(A), NFAC has erred on facts and in law in not considering that when in audited accounts the purchases is of Rs. 14,97,28,020/-, addition of Rs. 17,80,05,306/- by treating the purchase as per purchase register which includes GST as undisclosed and further making addition of Rs. 8,66,86,696/- in respect of purchases made from 5 parties who did not respond to notice u/s 133(6) ignoring that they are part of the purchase as per purchase register is bad in law and results in double addition.
3. The Ld. CIT(A), NFAC has erred on facts and in law in not considering that the difference in the amount credited in the bank account vis-à-vis the sales & debtors shown in the audited accounts cannot be presumed to be undisclosed sale so as to make addition of Rs. 7,74,992/- by applying profit rate of 2.1% on the alleged sales and also not deciding the disallowance of Rs. 7,36,096/- made by AO by disallowing 20% of the expenses on merit.
4. The appellant craves to alter, amend and modify any ground of appeal.
5. Necessary cost be awarded to the assessee.”

3. At the outset, the Ld. Counsel Sh. P. C. Parwal, C. A. contended that the Ld. CIT(A), NFAC has rejected the appeal ex-parte qua the assessee without providing adequate opportunity of hearing and he did not decide the grounds on merit of the case. The AR has submitted before us that in Form No.35, the assessee has provided the e-mail address indiametaljpr@gmail.com. The first notice dt. 01.03.2023 referred by the Ld. CIT (A) was not a notice of fixing the date of hearing but it was only an enablement of communication and thus, the first hearing notice was issued

on 09.01.2024, and thereafter on 29.01.2024 at e-mail id ramsharma2012.47@gmail.com and another notice dt. 09.02.2024 was issued at yshrikrishna@yahoo.com. Thus, these notices were not issued at the e-mail id indiametaljpr@gmail.com provided in Form No.35. However, only one notice dt. 20.02.2024 issued at the e-mail id indiametaljpr@gmail.com, skipped the attention of assessee. Therefore, upholding the order of AO where huge addition has been made without proper service of the notice of hearing to the assessee and providing adequate opportunity of bearing is bad in law. All these notices are filed on record (APB, Pgs. 5-11).

4. The Ld. AR has referred to the section 282 r.w.r. 127 which provides the manner of service of notice. These provisions do not mention of communication to be presumed by placing notice on e-portal. A pragmatic view has to be adopted in service of the notice. An assessee cannot be expected to keep the e-portal open all the times so as to have knowledge of what the department is supposed to be doing with regard to the fixation of appeals. This view has been taken by **Hon'ble P&H High Court in case of Munjal BCU Centre of Innovation & Entrepreneurship Vs. CIT(E) (2024) 463 ITR 560 (copy enclosed at pg. 12-15)** Therefore, in view of the principles,

of natural justice, the AR requested that the matter be set aside to the AO to make fresh assessment by providing adequate opportunity of hearing.

5. The Ld. DR relied on the impugned order. However, he failed to furnish any contrary judgement of any equivalent or Higher Court. Accordingly, he has no objection to the request of the appellant in view of principles of natural justice.

6. We have heard both the sides, perused the material on record, impugned order, written submission and case law cited before us. Admittedly, the Ld. CIT(A) has decided the appeal ex-parte qua the assessee without granting adequate opportunity of being heard and adjudicating the grounds on merits of the case. The Ld. CIT(A) has merely stated that to decide this appeal in a timely manner several notices u/s 250 of the Income Tax Act, 1961 (the Act) were issued to the appellant through ITBA portal, which amounts to service of notice as provided u/s 282 of the Act without verifying and ascertain^{-ing} the email address given in Form No. 35 of the Memorandum of Appeal in the instance of non-compliance with the earlier notices.

7. In our view, the section 282 r.w.r. 127 provides the manner of service of notice where the provisions do not mention that communication to be

presumed by placing notice on e-portal. In the light of the Judgement delivered by the Hon'ble P&H High Court in case of "Munjai BCU Centre of Innovation & Entrepreneurship Vs. CIT(E)", ((Supra) we appreciate the contention of the Ld. AR that a pragmatic view has to be adopted in service of the notice as an assessee cannot be expected to keep the e-portal open all the times so as to have knowledge of what the department is supposed to be doing with regard to the fixation of appeals. Therefore, in view of the principle of natural justice, we set aside the matter to the file_✓ of the Ld. CIT(A) to adjudicate the grounds of appeal afresh on merits of the case after granting adequate opportunity of being heard to the appellant-_✓assessee. The Appellant shall cooperate in the appellate proceedings before the Ld. CIT(A).

8 Accordingly, the appeal is restored to the Ld. CIT(A) to adjudicate the matter *de novo* as per law.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 14.10.2024 ✓

- Sd -

(Narinder Kumar)
Judicial Member

- Sd -

(Dr. Mitha Lal Meena)
Accountant Member

GP/Sr.PS